

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

DEQUE SYSTEMS INC.

Plaintiff,

v.

Case No. 1:24-cv-00217-AJT-WEF

BROWSERSTACK, INC., and  
BROWSERSTACK SOFTWARE PVT. LTD.,

Defendants.

**DECLARATION OF RYAN J. MARTON IN SUPPORT OF DEFENDANTS' MOTION  
TO STRIKE THE EXPERT REPORT OF MICHAEL N. KAHAIAN**

I, Ryan J. Marton, declare as follows:

1. I am a partner with the law firm of Marton Ribera Schumann & Chang LLP, counsel for Defendants BrowserStack, Inc. and BrowserStack Software Pvt. Ltd. (collectively, “Defendants” or “BrowserStack”) in this matter. I submit this declaration in support of Defendants’ Motion to Strike Expert Report of Michael N. Kahaian (“Motion to Strike”). I have personal knowledge of the facts set forth herein unless otherwise indicated, and if called upon to testify, I could and would testify competently thereto.

2. Plaintiff Deque Systems, Inc. (“Deque”) served its Rule 26(a)(1) initial disclosures on June 7, 2024. A true and correct copy of Deque’s Rule 26(a)(1) initial disclosures served on June 7, 2024 is attached to this Declaration as **Exhibit 1**.

3. The Court’s Rule 16(b) Scheduling Order (D.I. 37; D.I. 35-1) in this case set the deadline for Deque to serve Rule 26(a)(2) expert disclosures as August 9, 2024. Deque did not disclose any damages expert or serve any expert reports by the August 9, 2024 deadline. At no point prior to August 9, 2024 did Deque follow up with BrowserStack about the production of documents or the need for specific documents or information to prepare expert reports on damages, or otherwise.

4. On June 21, 2024, BrowserStack served its First Set of Interrogatories. On July 29, 2024, Deque served its Responses to BrowserStack’s First Set of Interrogatories. A true and correct copy of Deque’s Responses to Defendant’s First Set of Interrogatories served on July 29, 2024 is attached to this Declaration as **Exhibit 2**.

5. On August 30, 2024, Deque served its First Supplemental Responses to Defendants’ First Set of Interrogatories. A true and correct copy of Deque’s First Supplemental Responses to Defendant’s First Set of Interrogatories served on August 30, 2024 is attached to

this Declaration as **Exhibit 3**. As of the filing of this Declaration, Deque has not otherwise amended or supplemented its response to Interrogatory No. 9.

6. On September 6, 2024, Deque served its Supplement to Its Initial Disclosures, disclosing for the first time Michael Kahaian as a witness who “possesses knowledge in the form of expert opinion testimony regarding Deque’s damages in this matter.” A true and correct copy of Deque’s Supplement to Its Initial Disclosures served by Deque on September 6, 2024 is attached to this Declaration as **Exhibit 4**. As of the filing of this Declaration, Deque has not otherwise amended or supplemented its Rule 26(a)(1) initial disclosures.

7. On September 23, 2024, BrowserStack served the Expert Report of Paul C. Benoit (“Benoit Report”) relating to the issue of damages. A true and correct copy of the Benoit Report served by BrowserStack on September 23, 2024 is attached to this Declaration as **Exhibit 5**, and is being filed under seal.

8. On October 8, 2024, Deque served the Expert Report of Michael N. Kahaian (“Kahaian Report”). A true and correct copy of the Kahaian Report served by Deque on October 8, 2024 is attached to this Declaration as **Exhibit 6**, and is being filed under seal.

9. On October 8, 2024, BrowserStack requested Deque withdraw the Kahaian Report because, among other reasons, it was untimely and prejudicial, or Defendants would move to strike or otherwise seek relief from the Court. A true and correct copy of that correspondence is attached as **Exhibit 7** to this Declaration.

10. On October 9, 2024, Deque requested BrowserStack withdraw its objection to the Kahaian Report. In response, BrowserStack informed Deque that it would not withdraw its objection and unless Deque agreed to withdraw the Kahaian Report, BrowserStack intends to move the Court to strike or exclude the Kahaian Report on the grounds that it is improperly

characterized as a rebuttal report and untimely. A true and correct copy of the email chain with the parties' October 9, 2024 correspondence is attached as **Exhibit 8** to this Declaration. As of today's date, Deque has not agreed to withdraw the Kahaian Report.

11. Deque has made several document productions in this case, including productions summarized in the chart below:

Date	Event
<b>2024-08-09</b>	<b>Deadline for Deque to serve Rule 26(a)(2) expert disclosures</b>
2024-08-20	DEQUE001 – (DEQUE 00000001 – 00009966) DEQUE002 – 2024-08-20 (DEQUE00009967 – 00009982)
2024-08-21	DEQUE002 (corrected)
2024-09-03	DEQUE003 (DEQUE 00009983 – 00010546)
2024-09-17	DEQUE004 (DEQUE 00010547 – 00010567)
<b>2024-09-23</b>	<b>Deadline for Deque to serve Rule 26(a)(2) expert disclosures (BrowserStack serves Benoit Report)</b>
2024-10-04	DEQUE005 (DEQUE 00010568 – 00013425)
2024-10-07	DEQUE006 (DEQUE 00013426 – 00013441) DEQUE007 (DEQUE 00013442 – 00013492)
<b>2024-10-08</b>	<b>Deadline to serve Rebuttal Expert Reports (Deque serves Kahaian Report)</b>
2024-10-08	DEQUE008 (DEQUE 00013493 – 00013507)

The Deque productions indicated in **red** in the chart above contain the documents in Deque's possession, custody, and control that were relied upon by Mr. Kahaian to make the damages calculations set forth in the Kahaian Report. *See* Kahaian Report ¶¶ 69-97, Exs. C-E (citing *e.g.* DEQUE13344, DEQUE13346, DEQUE13347, DEQUE13350, DEQUE13371, DEQUE13394, DEQUE13417, DEQUE13442, DEQUE13443-13451, DEQUE13452-13468,

DEQUE13493-13507). All those documents were all produced by Deque between October 4, 2024 and October 8, 2024, after BrowserStack's service of the Benoit Report.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on October 11, 2024 in San Francisco, California.

/s/ Ryan Marton  
Ryan Marton